**IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**

**SPECIAL CIVIL APPLICATION No. 11344 of 2007**

**For Approval and Signature:**

**HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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**RAJNIKANT VARDHILAL THAKKAR - Petitioner(s)**
**Versus**
**THE DEPUTY SECRETARY & 3 - Respondent(s)**

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**Appearance :**
MR MM TIRMIZI for Petitioner(s) : 1,
MS KIRAN PANDEY A.G.P. for Respondent(s) : 1,
None for Respondent(s) : 2 - 4.

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**CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA**

**Date : 04/05/2007**

**ORAL JUDGMENT**

1. Affidavit of the petitioner presented today along with other documents is ordered to be taken on record. The other side has received copy of the same.

2. **RULE**. Ms. Kiran Pandey learned A.G.P., waives service of rule on behalf of the respondents. At the request of the learned advocates, the matter is taken up for final hearing today.

3. This petition is directed against the order passed by the District Magistrate, Patan dated 9th February, 2005 and also the order passed by the Deputy Secretary, Home Department, Government of Gujarat dated 29th July, 2006. The petitioner had applied for issuance of license for possessing 0.32 bore revolver on the ground that he was doing business of purchasing and selling of cattle and for that purpose he was required to carry huge amount of cash money with him. He, therefore, needed weapon to protect himself as well as the money. He had made an application to the District Magistrate – respondent no. 2 herein. Before the District Magistrate, the petitioner remained present on 1st February, 2005 and he was heard personally. He advanced the same reason during personal hearing. However, respondent no. 2 observed that the petitioner was not an income tax payer. He further observed that when there is banking facility, the petitioner is not required to carry cash amount and, therefore, his request could not be accepted. Respondent no. 2, rejected the application by his order dated 9th

February, 2005. Against the said order, the petitioner preferred an appeal under Section 18 of the Arms Act being Appeal No.112/2005. It was preferred before respondent no. 1 . In the appeal also same grounds were agitated by the petitioner. However, the appellate authority observed that the petitioner had not produced evidence with regard to past income and also evidence to show that he had genuine apprehension regarding his safety. In view of these observations, the appellate authority dismissed the appeal. Hence, this petition.

4. I have heard Ms. Shahin Qureshi learned advocate appearing for Mr. Tirmizi for the petitioner and Ms. Kiran Pandey learned A.G.P., for the respondents. It is submitted by Ms. Qureshi that the respondents have not properly appreciated the reasons advanced by the petitioner. According to her, the petitioner is merely acting as commission agent by purchasing and selling cattle. She has further submitted that it is only in connection with the business he is required to carry large amount of money with him and for that purpose, he has apprehension about his own safety as well as the money. Today she has submitted additional affidavit of the petitioner annexed with certain documents including the income tax return of the petitioner, along with the

details of PAN card. On the basis of the same, she has further submitted that one of the grounds on which the impugned orders have been passed now does not survive. As against that Ms. Kiran Pandey learned A.G.P., has submitted that the reasons given by the authorities are cogent and reliable for deciding against issuance of license. She has further submitted that when the petitioner was required to produce relevant documents before the concerned authorities, he did not do it and now he has sought to produce them before this Court. According to her, it cannot be permitted. She has lastly submitted that the petition be dimissed.

5. I have carefully considered the submissions advanced by the learned advocates for the parties. I have also perused the record of the petition. Both the impugned orders show that the factors that have weighed with the authorities are that the petitioner has not produced any evidence to show that he paid income tax and secondly in view of the banking facility, he is not required to carry cash amount. However, the authorities appear to have overlooked one fact that the petitioner was having main dealing in rural areas and for that purpose he was required to carry cash amount with him since there would hardly any banking facility available

in such remote areas. Even if the banking facility is available it is difficult to understand whether the persons dealing with the petitioner had their account in the bank. The nature of business is such that even the account holders would insist upon having money in cash. In view of the same, there is some substance in the say of the petitioner. Further it is true that the petitioner ought to have produced before the concerned authority, income tax documents to show that he is income tax payer, but when they are permitted to be produced here, the Court can look into them. The documents show that the petitioner has filed return and he also holds Permanent Account Number. The income tax return also confirms the say of the petitioner that he was only a commission agent since it appears that he was having income below taxable limit. Be that as it may, the matter is now required to be remanded to the concerned authority i.e., respondent no. 2 for considering in line of the observations made in this judgment as well as the documents of income tax produced by the petitioner.

6. In the result, the impugned orders at annexures-A and B are quashed and set aside. The matter is remanded to respondent no. 2 for their reconsideration. Respondent no. 2 will fix the date of hearing and intimate it to the

petitioner at least 1 week in advance. He will also grant appropriate opportunity of hearing to the petitioner and permit him to produce relevant documents on record in support of his say. Respondent no. 2 will decide the issue keeping in view the documents that may be produced by the petitioner and also the observations made by this Court in this judgment. The exercise to be completed on or before 31st August, 2007. The decision will be intimated to the petitioner within 15 days thereafter.

7. In view of the above, the petition is allowed. Rule is made absolute with no order as to costs.

[Akshay H. Mehta, J.]

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